

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**



# 74-2401

To be signed by  
ALAN E. KAUFMAN

## United States Court of Appeals FOR THE SECOND CIRCUIT

Case No. 74-2401

UNITED STATES OF AMERICA,

Appellee,

ORAN YUK DO,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA.

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**United States Court of Appeals  
FOR THE SECOND CIRCUIT**

**Docket No. 74-2401**

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UNITED STATES OF AMERICA,

*Appellee,*

—v.—

CHAN YUK PO,

*Defendant-Appellant.*

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**BRIEF FOR THE UNITED STATES OF AMERICA**

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**Preliminary Statement**

Chan Yuk Po appeals from a judgment of conviction entered in the United States District Court for the Southern District of New York on October 25, 1974, after a three day trial before the Honorable Inzer B. Wyatt, United District Judge, and a jury.

Indictment 74 Cr. 792, filed August 7, 1974, charged Chan Yuk Po, Tony Moy and Lai Lai Kuen in Count One with conspiracy to violate the federal narcotics laws and in Count Two with distributing and possessing with intent to distribute eleven ounces of heroin on July 16, 1974, in violation of Title 21, United States Code, Sections 812, 841(a)(1), 841(b)(1)(A) and 846.\*

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\* Tony Moy and Lai Lai Kuen both pleaded guilty to the conspiracy count and testified as government witnesses.

Trial commenced on September 9, 1974, and ended on September 12, 1974, when the jury convicted Chan Yuk Po on the conspiracy count and acquitted him on the substantive count.

On October 25, 1974, Judge Wyatt sentenced Chan Yuk Po to three years imprisonment.

Chan Yuk Po is currently serving his sentence.

### **Statement of Facts**

#### **The Government's Case**

In April, 1974, Chan Yuk Po asked co-defendants Tony Moy and Lai Lai Kuen to lend him \$2,000 so he could pay off gambling losses. Lai Lai Kuen gave him the money. About a week or two later, Chan Yuk Po asked her for an additional \$3,000, saying that he was going to Hong Kong and needed the money to buy "Chinese medicine" there. She refused to give him the money. (Tr. 44-47, 92-97).\*

Chan Yuk Po's re-entry permit revealed that he went to Hong Kong on May 13, 1974. (GX 2). He called Tony Moy and Lai Lai Kuen from there, saying that he had obtained the "Chinese medicine" and needed \$3,000 to pay for it. Lai Lai Kuen agreed, withdrew \$3,000 from her savings account and gave it to Tony Moy, who cabled it to Hong Kong, where Chan Yuk Po received it (Tr. 48-50, 97-98, 124-125).

Chan Yuk Po's re-entry permit revealed that he left Hong Kong on June 7, 1974, and landed in Honolulu on the same date. Chan Yuk Po brought a combination radio-phonograph-recorder machine (hereinafter "radio") with him from Hong Kong, as shown by the United States Customs Declaration Form he submitted in Honolulu. (GX 4).

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\* "Tr." refers to the trial transcript, GX to Government exhibits received at trial.

After his return to the mainland, Chan Yuk Po called Tony Moy and Lai Lai Kuen from Boston, saying that he would be back in New York in a day or two. A few days later, Chan Yuk Po went to Lai Lai Kuen and Tony Moy's apartment, carrying the radio with him. He left the radio with Lai Lai Kuen in the apartment and told her he would return later. When he returned, Lai Lai Kuen and Tony Moy asked him whether the radio was all he had brought back from Hong Kong. Chan Yuk Po's response was to disassemble the radio, and show them bags of heroin concealed within. He said the heroin was worth \$30,000 and asked Tony Moy to help him sell it. Tony Moy agreed. Chan Yuk Po told Lai Lai Kuen that she would get her money back when he had sold the heroin. Chan Yuk Po then put the heroin in a brown paper bag and left with it. He gave the radio to Lai Lai Kuen as a gift. (GX 3; Tr. 50-54, 99-101).

A day or two later, Chan Yuk Po told Tony Moy that he needed \$1,100 so that a friend in Hong Kong could smuggle heroin hidden in a radio into South America. Chan Yuk Po said that this was to precede an eventual operation to smuggle 50 to 60 pounds of heroin from Hong Kong to New York via South America. Lai Lai Kuen gave \$1,100 to Tony Moy, who on June 28, 1974, purchased three money orders totalling \$1,100 (GX 7), and sent them, as instructed by Chan Yuk Po, to an individual in Hong Kong.\* (Tr. 59-63, 102-106).

Tony Moy found a customer for the heroin that Chan Yuk Po had smuggled in hidden in the radio. The purchase price was set at \$30,000. The sale was scheduled for July 16, 1974, and on that day Moy met with Chan Yuk Po at King's Coffee Shop. Chan Yuk Po asked Moy to go to the

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\* Because of the eventual arrests of Tony Moy, Lai Lai Kuen and Chan Yuk Po, the 50-60 pound shipment was not smuggled in as planned.



apartment where the sale was to take place—apartment 70 at 50 Bayard Street, in Chinatown—and check on the money. Moy did so, and the customer, Special Agent Joseph Salvemini acting in an undercover capacity, showed Moy the \$30,000. Moy then returned to the coffee shop, where Lai Lai Kuen had joined Chan Yuk Po. She had previously agreed to make the actual delivery of the heroin for Chan Yuk Po, who promised that he would then repay the money he owed her plus an additional \$1,000. Upon Moy's return, Chan Yuk Po said that the heroin was only eleven ounces, not a pound, and he asked Lai Lai Kuen to go to the apartment to so inform the customer. She did so, and the deal was set for the eleven ounces. Chan Yuk Po then told Lai Lai Kuen that the reduced price for the eleven ounces was to be \$20,625, and he wrote it down on a piece of paper. (GX 8). Chan Yuk Po told Lai Lai Kuen to meet him on Mulberry Street, and she went there to wait for him. When Chan Yuk Po arrived, he gave Lai Lai Kuen a brown paper bag containing the heroin, which she put in her pocketbook. Lai Lai Kuen then took the heroin to the apartment, where she was arrested. Tony Moy, who was waiting for Lai Lai Kuen in the lobby of the building, was arrested there also. (Tr. 27-35, 63-71, 106-111).

Agents Campbell, Lawler and Mockler were part of the surveillance team near 50 Bayard Street on July 16, and they observed Chan Yuk Po meeting with Lai Lai Kuen and Tony Moy at the coffee shop, Chan Yuk Po handing a white piece of paper to Lai Lai Kuen outside the coffee shop, Chan Yuk Po near Mulberry and Canal Street where Lai Lai Kuen was waiting, and Chan Yuk Po following Lai Lai Kuen on Canal Street, then on Elizabeth Street, to Bayard Street, where Lai Lai Kuen entered 50 Bayard Street to make the sale. (Tr. 145-148, 150-153, 157-162).

Chan Yuk Po was arrested on August 1, 1974.\* That same day, he was interviewed in the United States Attorney's Office, and, after having been fully advised of his rights, Chan Yuk Po admitted having made a trip to Hong Kong but denied that he brought a radio back with him to the United States from Hong Kong. (Tr. 35, 139-142).

### **The Defense Case**

Chan Yuk Po did not call any witnesses or testify on his own behalf.

## **ARGUMENT**

**The evidence was sufficient to convict Chan Yuk Po on the charge of conspiracy, and the jury's acquittal on the substantive count in no way affects the validity of the conspiracy conviction.**

Chan Yuk Po's sole claim on appeal is that his acquittal on the substantive count charging the sale on July 16, 1974 precludes consideration of those facts on the conspiracy charge, that in their absence there was insufficient evidence of his participation in the conspiracy prior to July 16, 1974, and that therefore his conviction for conspiracy cannot stand.

This claim is factually inaccurate and legally frivolous.

The factual inaccuracy arises from Chan Yuk Po's misapprehension (Br. at 6) that the date of his return to New York from Hong Kong and the date when he brought the radio to Lai Lai Kuen and Tony Moy and showed them the heroin concealed within was July 16, 1974. The premise

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\* At the time of the arrests of Lai Lai Kuen and Tony Moy in 50 Bayard Street, Chan Yuk Po had been lost from sight by the surveillance agents. (Tr. 161-162).

is totally false. The record reflects that Chan Yuk Po arrived in New York sometime after June 7, 1974, at which time he showed the heroin to Lai Lai Kuen and Tony Moy. It was during the period between that day and July 16, 1974, the day the sale was scheduled to take place, that Chan Yuk Po secured the cooperation of Lai Lai Kuen and Tony Moy in disposing of the eleven ounces of heroin he had smuggled in from Hong Kong.\*

The evidence of Chan Yuk Po's participation in the conspiracy as the leading figure was overwhelming, covering his activities both before and on July 16, 1974. The proof established conclusively that Chan Yuk Po borrowed money from Lai Lai Kuen to obtain heroin in Hong Kong; that he returned to New York with the heroin concealed in a radio, the existence of which he lied about on the day of his arrest; that after showing the heroin to Tony Moy and Lai Lai Kuen he asked Tony Moy to help him sell the heroin; that on June 28, 1974, he borrowed \$1,100 from Lai Lai Kuen to finance the importation of another quantity of heroin as a prelude to a 50 to 60 pound shipment of heroin; that he agreed to repay Lai Lai Kuen all the money he owed her plus \$1,000 if she would deliver the heroin he had smuggled to the customer that Tony Moy had located; that on July 16, 1974, some days later, he had Tony Moy check on the customer's money at 50 Bayard Street; that he had Lai Lai Kuen inform the customer that only eleven ounces were available; that he

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\* In his brief, Chan Yuk Po claims in a number of places that there was no proof that Tony Moy and Lai Lai Kuen knew that he was going to Hong Kong to purchase heroin, and that when he revealed the contents of the radio, they did not know it was heroin until he told them. Whether or not Tony Moy and Lai Lai Kuen knew prior to being shown the contents of the radio that Chan Yuk Po was going to buy heroin ("Chinese medicine") is totally immaterial. The proof of their joint criminal activities thereafter was more than adequate to establish the conspiracy.



gave the price for the eleven ounces to her by writing it down on a piece of paper; and that he gave the heroin to Lai Lai Kuen to deliver to the customer and then followed her to the vicinity of 50 Bayard Street.

As a legal matter, Chan Yuk Po's claim that the acquittal on the substantive count precludes consideration of the events of July 16, 1974 in connection with the conspiracy charge is frivolous. *United States v. Sisca*, 503 F.2d 1337, 1344 n. 9 (2d Cir. 1974), *cert. denied*, 43 U.S.L.W. 3281 (November 11, 1974). Moreover, "[i]t is well settled that even plainly inconsistent jury verdicts, simultaneously rendered are the jury's prerogative" \* and will not be disturbed. *United States v. Zane*, 495 F.2d 683, 689-692 (2d Cir. 1974), *cert. denied*, 43 U.S.L.W. 3239 (October 21, 1974). *United States v. Ortega-Alvarez*, 506 F.2d 455, 457 (2d Cir. 1974); *United States v. Carbone*, 378 F.2d 420 (2d Cir.), *cert. denied*, 389 U.S. 914 (1967); *Dunn v. United States*, 284 U.S. 390 (1932).\*\* The acquittal on the substantive count under these circumstances has no collateral estoppel effect on Po's conspiracy conviction. *United States v. Zane*, *supra*, 495 F.2d at 690.

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\* In any event, the verdict is not plainly inconsistent. It is possible that the jury did not believe beyond a reasonable doubt Lai Lai Kuen's testimony about the events of July 16, 1974 and therefore could not convict Chan Yuk Po on the possession count. However, based on the testimony of the agents concerning Chan Yuk Po's meetings with the accomplices at the coffee shop, his handing a slip of paper to Lai Lai Kuen, his being in the vicinity of Mulberry and Canal Streets, and his following Lai Lai Kuen from there back to Bayard Street where the sale was to have occurred, plus his false exculpatory statement concerning his returning from Hong Kong with the radio, the jury could have found such actions to have constituted sufficient circumstantial evidence of Chan Yuk Po's involvement in the enterprise, thus justifying the conviction on the conspiracy count.

\*\* *Ortega-Alvarez* and *Carbone* each involved a defendant convicted of conspiracy but acquitted of the substantive narcotics offense also charged.

**CONCLUSION**

**The judgment of conviction should be affirmed.**

Respectfully submitted,

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*United States Attorney for the  
Southern District of New York,  
Attorney for the United States  
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ALAN R. KAUFMAN,  
JOHN D. GORDAN, III,  
*Assistant United States Attorneys,  
Of Counsel.*

AFFIDAVIT OF MAILING

STATE OF NEW YORK )  
COUNTY OF NEW YORK) ss.:

ALAN R. KAUFMAN being duly sworn,  
deposes and says that he is employed in the office of the  
United States Attorney for the Southern District of New York.

That on the 18th day of February, 1975  
he served <sup>2 copies</sup> ~~no copy~~ of the within brief  
by placing the same in a properly postpaid franked envelope  
addressed:

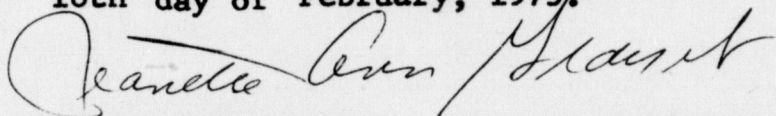
LaBerteau & McLaughlin  
130 West 42nd Street  
New York, New York

And deponent further says that he sealed the said envelope  
and placed the same in the mail box ~~drop~~ for mailing  
outside the United States Courthouse, Foley Square,  
Borough of Manhattan, City of New York.

  
ALAN R. KAUFMAN

Sworn to before me this

18th day of February, 1975.



JEANETTE ANN GRAYEB  
Notary Public, State of New York  
No. 24-1541575  
Qualified in Kings County  
Certificate filed in New York County  
Commission Expires March 30, 1975